

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BRIAN STILES and KEYANTA MAYE,

Plaintiff,

v.

Civil Action No. _____

MERCANTILE ADJUSTMENT BUREAU, LLC,

Defendant.

COMPLAINT AND DEMAND FOR JURY TRIAL

I. INTRODUCTION

1. This is an action for actual and statutory damages brought in response to Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (hereinafter "FDCPA") which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices and the Telephone Consumer Protection Act of 1991 (hereinafter referred to as the "TCPA").

II. JURISDICTION AND VENUE

2. Jurisdiction of this court arises under 15 U.S.C. §1692k(d), 28 U.S.C. § 1331, and 28 U.S.C. § 1337.
3. That Plaintiff's cause of action under the TCPA is predicated upon the same facts and circumstances that give rise to their federal cause of action. As such, this Court has supplemental jurisdiction over Plaintiff's TCPA causes of action pursuant 28 U.S.C. §1367.
4. Venue is proper in this district under 28 U.S.C. §1391(b) in that the Defendant transacts business here and the conduct complained of occurred here.

III. PARTIES

5. Plaintiff, Brian Stiles, is a natural person residing in the County of Erie and State of New York and is a "consumer" as that term is defined by 15 U.S.C. §1692a(3).
6. Plaintiff, Keyanta Maye, is a natural person residing in the County of Erie and State of New York and is a "consumer" as that term is defined by 15 U.S.C. §1692a(3).

7. Defendant, Mercantile Adjustment Bureau, LLC, is a domestic limited liability company organized and existing under the laws of the State of New York and is a “debt collector” as that term is defined by 15 U.S.C. §1692a(6).
8. That Defendant, at all times relevant herein, owned, operated and/or controlled “customer premises equipment” as defined by 47 U.S.C. §153(14), that originated, routed, and/or terminated telecommunications.
9. That at all times relevant herein, Defendant has used the United States mail service, telephone, telegram and other instrumentalities of interstate and intrastate commerce to attempt to collect consumer debt allegedly owed to another.
10. That Defendant, at all times relevant herein, engaged in “interstate communications” as that term is defined by 47 U.S.C. §153(22).
11. That Defendant, at all times relevant herein, engaged in “telecommunications” as defined by 47 U.S.C. §153(43).
12. That Defendant, at all times relevant herein, used, controlled and/or operated “wire communications” as defined by TCPA, 47 U.S.C. §153(52), that existed as instrumentalities of interstate and intrastate commerce.
13. That Defendant, at all relevant times herein, used, controlled and/or operated “automatic telephone dialing systems” as defined by TCPA, 47 U.S.C. §227(a)(1) and 47 C.F.R. 64.1200(f)(1).
14. The acts of the Defendant alleged hereinafter were performed by its employees acting within the scope of their actual or apparent authority.
15. Defendant regularly attempts to collect debts alleged to be due another.
16. All references to “Defendant” herein shall mean the Defendant or an employee of said Defendant.

IV. FACTUAL ALLEGATIONS

17. That Plaintiff Brian Stiles allegedly incurred a medical debt. This debt will be referred to as “the subject debt.”
18. That the subject debt arose out of a transaction in which money, services or property, which was the subject of the transaction, was primarily for personal, family and/or household purposes. As such, said debt is a “debt” as that term is defined by 15 U.S.C. §1692a(5).
19. That Plaintiff thereafter defaulted on the subject debt.

20. That upon information and belief Defendant was employed by the medical provider to collect on the subject debt.
21. That in or about May of 2012, Defendant began calling Plaintiff Brian Stiles multiple times per week, often multiple times per day, in an attempt to collect on the subject debt.
22. That during one of these calls, Plaintiff Brian Stiles had a conversation with Defendant in which he stated to not call him at phone number 716-861-7045 as it is his step-daughter's, Plaintiff Keyanta Maye's phone.
23. That despite Plaintiff Brian Stiles' request, Defendant continued to call the 716-861-7045 phone number in an attempt to collect the alleged debt from the Plaintiff.
24. That the Defendant called Plaintiff Brian Stiles' step-daughter's cellular telephone and left voice mails disclosing Plaintiff's debt and that they were a debt collector.
25. That as a result of Defendant's acts Plaintiffs became nervous, upset, anxious, and suffered from emotional distress.

V. COUNT ONE
(Fair Debt Collection Practices Act
and 15 U.S.C. §1692 et seq.)

26. Plaintiffs repeats, re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 25 above.
27. The conduct of Defendant as described in this complaint violated the Fair Debt Collection Practices Act (15 U.S.C. §1692 et seq.) as follows:
 - A. Defendant violated 15 U.S.C. §1692b(2), 15 U.S.C. §1692b(3), and 15 U.S.C. §1692c(b), by calling Plaintiff Brian Stiles' step-daughter's cell phone and leaving messages on it with regard to Plaintiff's debt.
 - B. Defendant violated 15 U.S.C. §1692g by failing to provide Plaintiff Brian Stiles with a 30-day validation notice within five days of the initial communication.
28. That as a result of the Defendant's FDCPA violations as alleged herein, Plaintiffs became nervous, upset, anxious and suffered from emotional distress.

VI. COUNT TWO

(Telephone Consumer Protection Act of 1991
and 47 C.F.R.64.1200, et seq.)

29. Plaintiffs repeat, reallege and incorporate by reference the preceding and succeeding paragraphs in this complaint as if each of them was reprinted herein below.
30. The Defendant at all times material and relevant hereto, unfairly, unlawfully, intentionally, deceptively and/or fraudulently violated the TCPA, 47 U.S.C. §227, et seq. and 47 C.F.R. 14.1200, et seq. and TCPA, 47 U.S.C. §227(b)(1)(A)(iii) by initiating telephone calls to Plaintiff's cellular telephone using an automated telephone dialing system and/or using an artificial and/or prerecorded voice to deliver messages without having the consent of Plaintiff to leave such messages and/or after Plaintiff revoked said consent.
31. The acts and/or omissions of the Defendant at all times material and relevant hereto, as described in this Complaint, were done unfairly, unlawfully, intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal defense, legal justification or legal excuse.
32. The acts and/or omissions of the Defendant at all times material and relevant hereto, as described in this Complaint, were not acted or omitted pursuant to 47 C.F.R. §64.1200(f)(2).
33. As a causally-direct and legally proximate result of the above violations of the TCPA, the Defendant at all times material and relevant hereto, as described in this Complaint, caused the Plaintiff to sustain damages as a result of their innumerable telephone calls that harassed, annoyed and abused Plaintiff, and disturbed her peace and tranquility at home and elsewhere.
34. As a causally-direct and legally proximate result of the above violations of the TCPA, the Defendant at all times material and relevant hereto, as described in this Complaint, caused the Plaintiff to sustain damages and experience severe emotional distress.
35. As a causally-direct and legally proximate result of the above violations of the TCPA, the Defendant at all times material and relevant hereto, as described in this Complaint, is liable to actual damages, statutory damages, treble damages, and costs and attorneys fees.
36. Plaintiff received multiple telephone calls from an automatic telephone dialing system and/or an artificial and/or prerecorded voice entitling Plaintiff to Five Hundred Dollars and No Cents (\$500.00) for each artificial and/or prerecorded telephone call pursuant to the TCPA, 47 U.S.C. §227(b)(3)(B).
37. The Defendant caused said telephone calls of an artificial and/or prerecorded nature to be placed willfully and/or knowingly entitling each Plaintiff to a maximum of treble damages, pursuant to TCPA, 47 U.S.C. §227(b)(3)

WHEREFORE, Plaintiffs respectfully requests that judgment be entered against the Defendant for:

- (a) Actual damages;
- (b) Statutory damages pursuant to 15 U.S.C. §1692k and 47 U.S.C. §223(b)(3)(B).
- (c) Treble statutory damages pursuant to 47 U.S.C. §227b(3).
- (d) Costs, disbursements and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k.
- (e) For such other and further relief as may be just and proper.

VI. JURY DEMAND

Please take notice that Plaintiffs demand trial by jury in this action.

Dated: April 2, 2013

/s/ Seth J. Andrews
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